IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/02/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

SECOND APPEAL No.758 OF 1993

Padmavathi Ammal ... Appellant

-Vs-

1.The Tamil Nadu Electricity Board,
by its Superintending Engineer,
Cuddalore,
South Arcot District.

2.The Assistant Divisional Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Vadalur,
South Arcot District. ... Respondents

Second Appeal preferred under Section 100 of the Code of Civil Procedure for the relief as stated therein.

For appellant : Mr.K.Raghunathan

For respondents: Mr.S.Rajeswaran

:JUDGMENT
This Second Appeal is directed against the judgment and decree dated 12.4.1993 rendered in A.S.No.231 of 1992 by the Court of Subordinate Judge, Cuddalore thereby confirming the judgment and decree dated 2 4.1.1992 rendered in O.S.No.229 of 1989 by the Court of District Munsif, Cuddalore.

2. Tracing the history of the above second appeal coming to be preferred, it comes to be known that the appellant herein has filed the suit in O.S.No.229 of 1989 on the file of the Court of District Munsif, Cuddalore as against the respondents/The Tamil Nadu Electricity Board and its officials for declaration to the effect that the order dated 10.3.1989 made in No.4648/88-89 by the respondents is deliberate and contrary to law and the same is not legally valid and for permanent injunction from disconnecting the Service Connection No.216 and for costs.

3. In the plaint, the appellant/plaintiff would submit that he is running a rice mill viz. Vetrivel Rice Mills for which the service connection number is 216 and the power supply was given by the respondents

with provision for a 20 H.P. Motor; that the Inspection Officer of the respondents, having inspected the rice mill on 10.3.1989, submitted a report stating thereby that instead of making use of a 20 H.P. Motor, the plaintiff made use of a 30 H.P. Motor and hence required the plaintiff to pay a penalty of Rs.14,970/= within fifteen days, lest they would cut-off the power supply, as per the notice issued by the second defendant.

4. The plaintiff, therefore, has averred that they have not made use of a 30 H.P. Motor and even if it is so, for the consumption they have been paying the monthly rental to the respondent Board properly accounting for the same in the meter without any default; that the notice has been issued contrary to the law and justice, misusing the powers granted to the respondents; that the charges are imaginary and false and they have not been made on proper inspection of the site and therefore they need not have to pay the penalty as per the notice issued dated 10.3.1989 and hence the suit seeking the relief extracted supra.

5. In the written statement filed, the defendants would submit that all the true facts and circumstances have not been brought forth in the plaint; that on 23.1.1985, the Electricity Board Squad for Prevention of Theft of Energy inspected S.C.No.216 and found out that instead of making use of the 20 H.P. Motor, the plaintiff made use of 30 H.P. motor thus using an additional power of 10 H.P. and therefore required the plaintiff to pay the penal assessment of Rs.4,558/= within 15 days after the receipt of the notice but instead, the plaintiff filed a writ petition in the High Court in W.P.No.8409 of 1985 wherein it was ordered that the plaintiff should pay the sum of Rs.2,279/= in favour of the Electricity Board and get the power supply and sending a show-cause notice, the matter must be ultimately decided by the Electricity Board; that they sent the show-cause notice dated 31.1.1986 requiring the plaintiff to reply within thirty days; that the plaintiff did not at all give any reply and only on 4.10.1986, the plaintiff having remitted the balance sum of Rs.1,982/= from the penal assessment kept quite and continued to make use of the 30 H.P. motor; that the second defendant, therefore, sent a communication dated 10.3.1989 to pay a sum of Rs.14,970/= and hence the plaintiff has come forward to file the above suit; that the inspection of the meter and the spot had been conducted meticulously and without complying with the demand notice, the plaintiff has come forward to file the above suit falsely. On such averments, the defendants/respondents would pray to dismiss the above suit with costs.

6. The trial Court, based on the above pleadings, would frame the following issues for determination of all the questions raised in the whole of the suit viz.:
1.Whether the suit is barred by the doctrine of lapse?
2.whether it is true that the plaintiff misused the power?
3.Whether, in this case, the Court Fee has not been properly paid?
4.Whether the plaintiff is entitled for declaration? and
5.What relief, if any, is the plaintiff entitled to?

7. The trial Court, then would conduct a thorough trial wherein on the part of the plaintiff and the defendant, they would each

examine one witness as P.W.1 and D.W.1 respectively for oral evidence and on behalf of the plaintiff, she would m ument as Ex.A.1 for documentary evidence and 13 documents would be marked as Exs.B.1 to B.1 3 on behalf of the defendants. Thereupon, the trial Court having had its own discussions on the facts and circumstances of the case issue-wise, would arrive at easy conclusions deciding issues No.1 and 2 against the plaintiff and in favour of the defendants and regarding the third issue framed pertaining to the Court Fee, the trial Court would conclude that proper Court Fee has been paid and for the fourth issue, the trial Court would conclude that the plaintiff is not entitled to get the relief of declaration, thus ultimately answering the 5th issue to the effect that the plaintiff is not at all entitled to any relief sought for and would dismiss the suit.

8. So far as the appreciation of evidence by the trial Court to arrive at the above conclusion is concerned, regarding the oral evidence, though both the witnesses would adhere to the pleadings of the plaintiff and the defendants respectively, it would be laid emphasis on the part of the defendants that the plaintiff was making use of a 30 HP motor even though she is permitted to use only a 20 HP motor and hence based on Ex.B.1 report, a notice in Ex.B.2 dated 3.5.1985 followed by Exs.B.8 and B.9 was issued and ultimately sending Ex.B.13 for removal of the 30 HP motor, but the plaintiff did not at all come forward to do the same, but only filed the above suit and hence the trial Court factually would arrive at the conclusion that the plaintiff is not entitled to any relief sought for thus dismissing the suit.

9. On appeal by the plaintiff, the first appellate Court, the Court of Subordinate Judge, Cuddalore also would assess the facts and circumstances of the case as pleaded before the trial Court and framing its own points for consideration viz. (1) whether the appellant was entitled to the declaration and permanent injunction and (2) whether the appeal is liable to be allowed, would have its own dissection of the facts and circumstances of the case in the light of the materials placed on record and would ultimately concur with the trial Court thus dismissing the appeal with costs and it is against these concurrent judgments rendered by the trial Court and the first appellate Court as well, the plaintiff in the suit has come forward to prefer the above second appeal on certain grounds brought forth in the grounds of appeal and this Court admitted the same for determination of the following substantial questions of law:

1.The Courts below overlooked that as per Board Proceedings M.S.No.78 0 an initial assessment notice has to be issued thus giving the consumer an opportunity and only thereafter a final assessment is to be made which in the instant case Ex.A.1 is a final notice which is thus contrary to the procedure laid down in the Board proceedings.
2.The courts below erred in not adverting to the factum of noncompliance with the procedure before the issuance of Ex.A.1 which is a final order.

10. During arguments, the learned counsel for the appellant having assessed the facts pleaded on both sides would raise a legal point for proper consideration of this Court that in the circumstances of the case, the authorities concerned i.e. the respondents should have had an initial

assessment as per the Board's proceedings in M.S.No.780 and notice issued to the plaintiff with an opportunity to be heard and only thereafter a final assessment has to be made, which in the instant case has not been done and Ex.A.1 being the final notice, is contrary to the proceedings laid down in the Board's proceeding and as per Clause 37, Point 6.01 of the Terms and Conditions of Supply of Electricity of Tamil Nadu Electricity Board (hereinafter referred to as the Terms and Conditions).

11. On the part of the respondents also, though the learned counsel representing them, on facts, would adhere to the merit of the case as it has been decided by the Courts below, he has no say regarding the legal question raised by the learned counsel for the appellant and hence it has become incumbent on the part of this Court to focus its attention on the legal question raised by the appellant under Clause 37, Point 6.01 of the Terms and Conditions si nce it is relevant for consideration the said Point is extracted hereunder:

"On detection of violation, the officer authorised to issue show cause notice as per Clause 10 of this Schedule will issue a notice to the consumer asking him to remove the violation within twenty-four hours or seven days as the case may be, failing which the supply will be disconnected and to show cause why the compensation charges should not be levied for having committed the violation. Reply to show cause notice shall be sent by the consumer within seven days from the date of receipt of notice."

12. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, it has become necessary on the part of this Court to decide the question of law raised on the part of the appellant as it has been reduced into the first substantial question of law that as per the Board Proceedings in M.S.No.780 an initial assessment notice has to be issued thus giving the consumer an opportunity to be heard and only thereafter a final assessment is to be made which in the instant case has been done under Ex.A.1 and this procedure being mandatory and having not been adopted by the Electricity Board authorities, the respondents herein, it would be pointed out that the judgments and decrees passed by both the Courts below, for non-consideration of this material and procedural aspect get only vitiated in law.

13. Though the above question raised is a procedural one, still, since it is related to the opportunity that is initially to be afforded to the consumer, no mention need be necessary that non-issuance of such a notice on initial assessment seeking the explanation of the consumer would be opposed to the high principles of natural justice.

14. Since it is, though not openly admitted, patent and glaringly visible that no such initial assessment notice has been issued giving the plaintiff an opportunity to be heard prior to resorting to pas the final assessment order as it could be seen in Ex.A.1 in the case in hand and the same being contrary to the procedures laid down by law, it has to be held

that the factum of non-compliance of this legal procedure would only pave the way for the final assessment notice issued in the second respondent's proceeding No.4648/88-89 dated 10.3.1989 to get vitiated in law.

15. Since the case of the respondent constituted against the appellants fails on account of the non-compliance of the mandatory provisions of law as brought forth above, the case constructed on facts and circumstances before both the Courts below and the materials made available and appreciated by the Courts below need not be discussed much less since the above proceeding being the second appeal wherein only substantial questions of law have to be answered on the background of the facts and circumstances and evidence. Since both the above substantial questions of law framed have to be answered only in favour of the appellant and against the respondents case, this Court is of the firm view that the fact situation need not have to be gone into, to any extent and the legal question raised on the part of the plaintiff, the appellant herein, since touches the very root of the principle based on which the edifice has to be built and for non-compliance of the same, the proceeding initiated by the respondents against the appellant as per their order dated 10.3.1989 made in No.4648/88-89 would only get vitiated and hence the judgments rendered by both the Courts below would only become liable to be set aside and hence the following judgment:
In result,
(i)the above second appeal succeeds and the same is allowed.
(ii)the judgment and decree dated 12.4.1993 rendered in A.S.No.231 of 1992 by the Court of Subordinate Judge, Cuddalore and the judgment and decree dated 24.1.1992 rendered in O.S.No.229 of 1989 by the Court of District Munsif, Cuddalore are hereby set aside.
(iii)The suit in O.S.No.229 of 1989 on the file of the Court of District Munsif, Cuddalore stands decreed as prayed for.
However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes
Internet: Yes

Rao

To
1.The Subordinate Judge, Cuddalore
2.The District Munsif, Cuddalore.